

PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

KEMAL GULER, ET AL.

Group Art Unit: 3625

Serial No.: 10/683,985

Examiner: Levine, Adam L.

Filed: October 10, 2003

Conf. No.: 3445

For: METHOD AND SYSTEM FOR
CONTROLLING FEEDBACK FOR AN
ONLINE AUCTION

**REPLY BRIEF
ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Mail Stop Appeal Brief - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

This submission is in response to the Examiner's Answer that was mailed on May 1, 2008, in the above-referenced application.

In the Answer, the Examiner initially repeats the rejections set forth in the Office Action dated November 9, 2007 (from which the current appeal is taken). All of the Examiner's new arguments appear to be set forth in the "Response to Argument" section at pages 6-14 of the Answer. Accordingly, the following remarks respond to the

arguments within that section using the same subsections as were employed by the Examiner.

Rejection Under § 102(b) Over Abeshouse

Claims 11, 12, 14 and 16

In Appellants' remarks with respect to independent claim 11 in the Appeal Brief, Appellants pointed out very specifically why the portions of Abeshouse cited by the Examiner failed to disclose computer-executable instructions that when executed implement a method allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction. In the present Answer, the Examiner makes certain general arguments but neither refutes any of Appellants' specific points nor specifically discusses any additional support in Abeshouse that either expressly or inherently discloses such features. The Examiner's general arguments are addressed as follows.

In several places, the Examiner emphasizes that claim 11 does not require the end-user to select the rule but instead allows selection by any entity. Such emphasis apparently arise out of certain comments made by Appellants at the end of their remarks which describe certain benefits that can be achieved by systems constructed in accordance with claim 11. However, it is noted that none of the points raised by Appellants with respect to Abeshouse's disclosure in any way rely on any requirement that any particular person or entity must select the feedback rule. Instead, they emphasize that Abeshouse's system does not provide functionality for allowing any person or entity to select a feedback rule for an online auction contemporaneously with an end-user initiating the online auction.

The Examiner states that Appellants, "did not address several sections of the prior art that were also cited by the examiner in explaining this rejection," specifically referencing page 8 paragraph 0089 and page 20 paragraphs 0173-0174. At the outset, it is noted that Appellants did in fact address all of the portions of Abeshouse cited by the Examiner with respect to the above-referenced feature of the invention. The foregoing portions of Abeshouse mentioned by the Examiner previously appear to have been cited in reference to a different claim; specifically, the Examiner previously only cited such portions as allegedly showing, "customizing feedback rules by the auction program based on the auction rules entered by the end-user." Also, while now mentioning those portions of Abeshouse in connection with the above-referenced feature of the invention, the Examiner still does not explain how they pertain to this feature. Nevertheless, those portions of Abeshouse are addressed as follows.

Page 8 paragraph 0089 of Abeshouse discusses the screenshots illustrated in its Figures 6-8 for an auction where "access to market feedback is restricted to those bidders 30 who have submitted at least one bid." Page 20 paragraphs 0173-0174 of Abeshouse discusses certain additional examples of differential market feedback rules, as well as certain bidding rules. Neither portion of Abeshouse says anything at all about when feedback rules are selected.

The Examiner next disagrees with Appellants' characterization of Abeshouse's feedback rules as being "hard-coded" or "hard-wired" into the system. However, the Examiner does not point to any specific disclosure within Abeshouse to the contrary. Instead, the Examiner simply argues without any support whatsoever that, "The prior art discloses dynamically modifying feedback rules and altering them based on details

entered by the user in setting up the auction." Appellants are unable to find any such disclosure in Abeshouse. The Examiner also argues,

"...this characterization by the appellants is inconsistent with appellants other contention that the prior art does not disclose feedback that can be selected through a computer program. In fact the present claim describes feedback rules that are similarly predetermined, and are selected contemporaneously with the auction."

However, Appellants do not understand what these statements mean. For example, it is unclear what the alleged inconsistency is. It is also unclear why the ability to select from among predetermined feedback rules, within the scope of claim 11, would affect any of the points raised by Appellants, provided that the ability to make such a selection can be exercised contemporaneously with the end-user initiating the corresponding online auction.

In short, none of the additional arguments raised by the Examiner in connection with independent claim 11 is believed to show that Abeshouse would have anticipated claim 11. Accordingly, Appellants maintain their request to reverse the rejection of claim 11, together with its dependent claims.

Claims 23 and 24

In Appellants' remarks with respect to independent claim 23 in the Appeal Brief, Appellants pointed out why the portions of Abeshouse cited by the Examiner failed to disclose at least the feature of an auction program providing data to a client computer system for generating an auction interface which, in turn, permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction. The Examiner's arguments in the present Answer often are difficult to follow, but are addressed below in the order they were made by the Examiner.

At the outset, the Examiner refers to "potential function of the means". It is not clear what is meant by this expression. Claim 23 only recites actual functions of the corresponding means.

The Examiner next argues,

"Appellants' argument is directed solely at the function of the program. These functions are disclosed in the prior art as discussed above and below with regard to other claims."

In light of the fact that the Examiner does not identify any particular arguments or claims, Appellants are unable to respond to this argument.

The Examiner then argues,

"With regard to the interface, appellant admits that the prior art discloses various interfaces and thus that the means for communicating operable to generate those interfaces must by necessity be present in the prior art."

If, by this statement, the Examiner is arguing that Appellants acknowledge that Abeshouse is capable of generating some generic interface, that argument is correct. However, such a disclosure does not have anything at all to do with the particular interface presently recited.

The Examiner next argues,

"The selection by the user of feedback from a pre-defined list of feedback rules is disclosed in Chambers with regard to claims 12-13 and 17-21."

In response, it is first noted that the present rejection is under § 102 over Abeshouse alone, so any reliance on Chambers (except possibly to show that some teaching is inherent in Abeshouse's disclosure, which does not appear to be the case here) is inappropriate. In addition, the Examiner has not provided any support for this argument, and Appellants do not see any such disclosure.

The Examiner next appear to be arguing that Appellants have taken the position that Abeshouse's communicating means would be an operable if used for the presently recited auction interface. However, Appellants have taken no such position. Part of the Examiner's confusion might be related to the fact that the Examiner has taken a portion of one of the present claim limitations out of context. Specifically, the Examiner refers to "the means for communicating operable to generate an auction interface". In fact, the subject portion of the claim limitation is,

"wherein the auction program is operable to provide data to the client computer systems over the means for communicating operable to generate an auction interface,"

with the rest of the limitation describing features of the auction interface. That is, recited the means for communicating does not generate the auction interface in isolation, but in response to data provided by the auction program.

Apparently following this same line of reasoning, the Examiner argues,

"The examiner believes that the specific selecting function of this particular interface, while disclosed in the cited prior art and discussed with regard to other claims, does not need to be explicitly disclosed with regard to anticipation of claim 23 because claim 23 is merely directed to a means for communicating that is operable to generate an interface."

However, as is readily apparent, claim 23 is not, "merely directed to a means for communicating that is operable to generate an interface". Instead, claim 23 recites particular interrelated claim limitations. As noted in the Appeal Brief, in order to establish anticipation under 35 U.S.C. § 102, "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920, (Fed. Cir. 1989). It simply is not sufficient to argue that a reference discloses a fragment of a claim limitation, particularly one that has been extracted out of context.

Moreover, the Examiner has not pointed to anything in Abeshouse that discloses the provision of an auction interface that permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction. Pointing to Abeshouse's ability to provide some generic user interface is insufficient to show the disclosure of this feature of the invention.

Finally, the Examiner argues,

"With regard to appellants' argument concerning disclosure of interfaces in the prior art, it is noted that some portions of the prior art referred to by appellants as having been cited by the examiner in making the rejection are not completely accurate. They appear to be the same passages referred to with regard to the above arguments concerning claim 11 and may have been inadvertently transposed in this section. Other portions of the prior art cited by the examiner and not addressed by the appellants include the abstract, figures 1,3-4,6-8, and 11-16; page 2 paragraphs 0026-0027, and page 3 paragraphs 0031, and 0041, and page 4 paragraphs 0056-0059."

In response, Appellants first note that the Examiner rejects independent claim 23 in aggregate together with 16 other claims. Accordingly, it is difficult to know which cited portions of Abeshouse are intended to apply to which of the presently recited features. This difficulty is compounded by the fact that there often is no clear explanation as to how the cited portions of Abeshouse allegedly disclose any of the presently recited features.

Even with respect to the additional portions of Abeshouse referenced in the Examiner's quotation above, there is no indication as to how they allegedly disclose the presently recited auction interface. Appellants have also studied those portions of Abeshouse and are not able to find any such disclosure.

Accordingly, Appellants maintain their request to reverse the rejection of independent claim 23, together with its dependent claims.

Claims 25, 28 and 29

In Appellants' remarks with respect to independent claim 25 in the Appeal Brief, Appellants pointed out why the portions of Abeshouse cited by the Examiner failed to disclose at least the feature of providing a user interface through which an end-user may input details for an auction carried out over a network, such details including feedback rules regarding information provided to bidders about status of the auction.

In the Answer, the Examiner takes the position that

"All that is required to anticipate this claim are a means for providing an interface. The interface in turn may be used to input details for an auction, the auction details including feedback rules." [Emphasis in original]

In other words, the Examiner apparently is arguing that any interface inherently allows an end-user to input details for an auction carried out over a network, including feedback rules regarding information provided to bidders about status of the auction.

However, no justification has been provided for any such argument, or for simply reading expressly recited limitations out of independent claim 25. To the contrary, common experience and common sense tell us that most interfaces do not permit the inputting of such information.

The Examiner next criticizes certain statements made by the Appellants in the Appeal Brief, but does not point to anything in Abeshouse that would contradict any of Appellants' statements. More importantly, the Examiner still fails to identify any interface in Abeshouse "through which an end-user may input details for an auction carried out over a network, such details including feedback rules regarding information provided to bidders about status of the auction." Accordingly, Appellants continue to believe that Abeshouse fails to disclose this feature of the invention.

Lastly, the Examiner appears to be attempting to equate the embodiment (e.g., as recited in dependent claim 33) in which feedback rules can be specified using a scripting language with Abeshouse's approach in which feedback rules apparently are hard-coded. However, even in this embodiment of the present invention the feedback rules regarding information provided to bidders about status of the auction are input through a user interface for inputting details for the auction (i.e., in accordance with which the auction is carried out over a network). Once again, no such interface is provided in Abeshouse.

Accordingly, independent claim 25, together with its dependent claims, is still believed to be allowable over the applied art.

Claim 26

With regard to claim 26, the Examiner argues,

"Appellants argue that the dynamic adjustment of feedback in the prior art is different than the dynamic customization of feedback in the present claims."

However, this characterization is incorrect. Appellants actually pointed out that Abeshouse does not disclose any interface means that allows an end-user to dynamically customize feedback provided to the bidders during the auction. The Examiner has not refuted this assertion.

Instead, the Examiner simply concludes, without any support whatsoever, "the examiner believes [this feature] is disclosed in the prior art as noted above." In response, Appellants note that, absent some express or inherent disclosure of this feature in Abeshouse, it cannot be said that Abeshouse anticipates claim 26.

Claim 27

As to claim 27, the Examiner simply states, "The examiner's position is the same as noted with regard to claim 26." However, Appellants point out that claim 27 recites a different limitation than claim 26. As noted in the Appeal Brief, Abeshouse does not appear to disclose an interface means that allows an end-user to dynamically customize timing of the feedback provided to the bidders during the auction.

Claim 30

The Examiner does not appear to address Appellants' remarks regarding claim 30. Accordingly, for the reasons set forth in the Appeal Brief, Appellants continue to believe that Abeshouse would not have anticipated claim 30.

Instead, the Examiner argues,

"...appellants have previously argued that the present claims are distinguishable from the prior art because the prior art only describes selecting from predefined feedback rules."

In response, Appellants note that this statement is flatly incorrect. In fact, in several places in the Appeal Brief Appellants pointed out just the opposite, i.e., that Abeshouse fails to disclose any such feature.

Claim 31

As to claim 31, the Examiner argues,

"It is noted that a variable can include bidder's rank, or for that matter anything describing the auction or the bidder. This information is clearly encompassed within the auction details previously entered, as disclosed in the prior art."

However, it is unclear how this statement has anything whatsoever to do with the presently recited feature that at least one of the pre-assembled feedback rules (which may be selected from a menu) includes a variable that is specified by the end-user.

Claim 32

As to this claim, the Examiner apparently relies on the arguments in the Answer pertaining to claim 31. Similar to Appellants' remarks with respect to claim 31 above, the Examiner still fails to point to anything in Abeshouse that discloses the presently recited feature that at least one of the pre-assembled feedback rules (which may be selected from a menu) includes a bidder's rank that is specified by the end-user.

Claim 33

Although the Examiner argues that claim 33 is addressed elsewhere in the Answer, Appellants are unable to find any argument that any particular portion of Abeshouse discloses any interface means allows an end-user to assemble new feedback rules by using a scripting language. Accordingly, Appellants continue to request reversal of the present rejection of claim 33.

Claim 34

The Examiner argues that the presently recited feature (i.e., that the interface means allows the end-user to specify that a first feedback rule is followed until a pre-specified event occurs, after which a second feedback rule is followed), "is the same as dynamic customization of timing of feedback". This statement clearly is incorrect. In addition, assuming the Examiners referring to claim 26, the Examiner does not even

attempt to point to anything in Abeshouse, throughout the Examiner's discussion of claim 26 in the Answer, as allegedly disclosing this feature the invention.

Claim 35

As to claim 35, the Examiner argues,

"...modifying the feedback rule has been understood by the examiner as synonymous with changing the feedback rule. This was addressed extensively in the Grounds of Rejection with regard to that concept.

It is not clear where in the Grounds of Rejection the Examiner is referring. In any event, Appellants addressed the Examiner's rejection of claim 35 in the Appeal Brief, and the Examiner has not refuted the Appellants' remarks in this regard. Accordingly, Appellants continue to believe that claim 35 is allowable over the applied art.

Claim 36

As to claim 36, the Examiner simply asserts,

"The graphic interface in claim 36 has been disclosed at length above and at least in the figures of the prior art."

However, Appellants do not see any discussion regarding any graphic user interface (through which the end-user may input details for the auction, including feedback rules regarding information provided to bidders about status of the auction) anywhere in the Answer.

Rejection Under § 103(a) Over Abeshouse in view of Chambers

Claims 17-21

In Appellants' remarks with respect to independent claim 17 in the Appeal Brief, Appellants pointed out that no permissible combination of Abeshouse and Chambers

would have disclosed or suggested at least the feature of an auction interface permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule from the group consisting of feedback timing, personalized feedback, and feedback based on rank.

In fact, the Examiner did not say anything at all about this feature in the original rejection. Rather, the Examiner's entire discussion of the teachings of Abeshouse and Chambers with respect to independent claim 17 are as follows:

"Abeshouse teaches all of the above as noted under the 35 USC §102 rejection. Abeshouse teaches a) customizing feedback rules, b) selecting feedback rules, c) various feedback rules and variations thereof, d) an end-user operating together with an auction system, or coordinator, and potentially the end-user and auction coordinator being one and the same (see at least page 1 ¶¶0010), and e) the end-user and auction system or coordinator together formulating details of an auction, including various rules. Abeshouse however does not explicitly disclose the permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule (independently of other auction details). Chambers teaches a) customizing feedback rules, b) selecting feedback rules, c) various feedback rules and variations thereof, d) an end-user operating together with an auction system, and d) the end-user and auction system together formulating details of an auction, including various rules, and also teaches permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule (see at least abstract, figs.5-6, page 6 ¶¶0080, page 7 ¶¶0084,0087; pages 7-8 ¶¶0095-0096)."

To the extent the Examiner is incorporating arguments made with respect to other claims, Appellants disagree with those arguments for all the reasons set forth above and in the Appeal Brief. In any event, as is readily apparent, the Examiner's remarks quoted above do not say anything at all about the above-referenced features of the invention.

Now, in the Answer, the Examiner merely emphasizes that,

“...the only element in Chambers relied upon by the examiner in the rejection is ‘permitting an end user of an online auction to customize feedback of the online auction by selecting a feedback rule.’”

Such a general teaching adds nothing to the teachings of Abeshouse with respect to the above-reference feature of the invention and, in and of itself, does not disclose or suggest that feature.

While simultaneously arguing that Chambers is only being relied upon for the above-referenced teaching, the Examiner also apparently argues that Chambers discloses the feature of allowing the selection of specific rules regarding personalized feedback, commenting “certainly personalized feedback could be any feedback modified based on any characteristic.” However, the Examiner does not point to anything within Chambers that would disclose or suggest any ability to select any personalized feedback rule. To the contrary, Chambers’s disclosure appears to contemplate that all bidders will receive exactly the same information.

In short, the Examiner does not point to any specific portions of Abeshouse and/or Chambers as even allegedly disclosing or suggesting an auction interface permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule from the group consisting of feedback timing, personalized feedback, and feedback based on rank. Instead, the Examiner simply points to certain general teachings of these references and concludes that they somehow would have suggested this feature of the invention.

Accordingly, Appellants continue to believe that independent claim 17, together with its dependent claims, is allowable over any permissible combination of Abeshouse and Chambers.

Claim 13

In the Examiner's original rejection, claim 13 is rejected together with six other claims (including independent claim 17) in a one-paragraph statement of rejection. The specific additional limitation recited in claim 13 is not mentioned anywhere within that paragraph. Accordingly, in the Appeal Brief Appellants made their best guess as to the portion of the applied art on which the Examiner apparently was relying, based on arguments made by the Examiner with respect to other claims. Specifically, Appellants assume that the Examiner was relying on page 7 ¶¶0080-0083 of Abeshouse and therefore pointed out why this portion of Abeshouse does not disclose or suggest the expressly recited limitation of claim 13.

Now, in the Answer, the Examiner apparently states that the rejection did not rely on Abeshouse at all. In particular, the Examiner concludes with the statement, "The feature is not present in Abeshouse."

In addition, the Examiner charges that Appellants are, "ignoring the explanation of this claim based on the presence of the feature in Chambers." However, Appellants are unable to find anything in the Examiner's one-paragraph statement of rejection that says anything at all about allowing an end user to change selection of feedback rules for an online auction during the online auction.

Accordingly, Appellants continue to believe that claim 13 is allowable over any permissible combination of Abeshouse and Chambers.

I. CONCLUDING REMARKS

In view of the foregoing remarks, Appellants respectfully repeat their request that the rejection of claims 11-14, 16-21 and 23-36 be reversed and a Notice of Allowance issued.

Respectfully submitted,

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Dated: June 30, 2008

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